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10/743,864	12/24/2003	Hideyuki Nojiri	246871US3DIV	9345
22850 7590 06/09/2011 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER DESAL, ANISH P				
ART UNIT 1788		PAPER NUMBER		
NOTIFICATION DATE 06/09/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

10/743,864

Applicant(s)

NOJIRI, HIDEYUKI

Examiner

ANISH DESAI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-61 is/are pending in the application.
- 4a) Of the above claim(s) 41, 42, 48, 55 and 56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39, 40, 43-47, 49-54 and 57-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed on 04/18/11 after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/18/11 has been entered.
2. After reviewing applicant's amendment submitted on 04/18/11, the 112-first paragraph rejections as set forth in the Office action (OA) mailed on 10/18/10 are withdrawn.
3. All of the art rejections as set forth in the OA mailed on 10/18/10 are sustained.
4. The 37 C.F.R. § 1.132 declaration submitted on 04/18/11 by Hideyuki Nojiri is thoroughly reviewed but not found persuasive for reasons set forth in this OA.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. **Claims 39, 40, 43, 44, 51-54, 57, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodgson (US 3,645,835).**

6. It is noted that claims 39 and 51 recite "a double eyelid forming article of manufacture for forming a fold on an eyelid of a user", "configured to be adhered onto an eyelid in a stretched state along a longitudinal direction to form a double eyelid", and "the tape member in the stretched state is configured to have a resilient shrinkability larger than tension of skin on the eyelid and smaller than a resilient shrinkability of the skin on the eyelid to form the fold in the direction perpendicular to the longitudinal direction of the tape member...lift the skin of the eyelid from a surface of an eyeball to form the fold on the eyelid by adhering to the eyelid while the tape member is in the stretched state and subsequently recoiling back toward the unstretched state", and "an entirety of the adhesive layer has an adhesiveness sufficient to prevent the...to form the double eyelid". It is respectfully submitted that the aforementioned recitations are intended use of the article, while some of the recitations are functional, it is submitted

that if a structure and composition of the prior art article is same as claimed by the applicant's article, then the prior art article is functionally capable of meeting the aforementioned recitations.

7. Based on the above, any reference disclosing a tape member that is resiliently stretchable (i.e. elastic) having "a first and second surface to elongate consistently along the entire longitudinal direction of the tape member while these surfaces are oppositely faced to each other", "the first surface and the second surface...pair of side edges that consistently elongate...the entire longitudinal direction of the tape member", "the individual side edges of the first surface and the second surface...forms in parallel to each other "long the whole longitudinal direction...when the tape member is in an unstretched state, cross sections of the first surface...uniform form along the whole longitudinal direction...when the tape member is in the unstretched state...the first surface and the second surface each have an adhesive layer...entirety of the first surface and the second surface, the tape member has a consistent...along the entire longitudinal direction", will read on the claims.

8. Hodgson discloses adhesive materials for use on animal bodies especially human bodies for surgical, dermatological or cosmetic use. The examples include surgical drapes, adhesive dressings, strips and sheets, and eyeliners (Column 2. lines 74-75, Column 3. lines 1-5). Additionally, according to Hodgson another preferred use of the present invention is in surgical drapes. These are large flexible sheets, which are

provided with a continuous layer of adhesive on at least a part only of one surface (column 7, lines 64-67). Further, at column 1 lines 25-30, Hodgson discloses "According to the present invention...a backing material having a pressure-sensitive adhesive on at least substantially the whole of the body-adhering portion of at least one surface of said backing material". This disclosure of applying the adhesive on at least one surface of the tape is interpreted as that adhesive layer can be applied on the both surfaces of the tape member, and it reads on the claim requirement of "at least one of the first surface or the second surface has an adhesive layer covering an entirety of the first surface or the second surface".

9. Additionally, the adhesive drape of Hodgson as shown in Figure 7 has a backing layer 2 with an adhesive coating 4 on the surface of the backing layer. Further, the adhesive 4 is covered by a protector 6 (column 10, lines 27-31). The backing layer 2 of Hodgson is preferably formed of a polyurethane film (column 8, lines 5-6). At column 5, lines 69-74, Hodgson discloses Estane 5701 and 5702 brand thermoplastic polyurethane films, which is a polyurethane elastomeric film as evidenced by US 2007/0066185A1 to Felipe (paragraph 0058). Further, Hodgson teaches a use of elastic backing material (column 10, lines 38-39). The elastic backing layer 2 of Hodgson having an adhesive coating 4 is equated to a resiliently stretchable elongate tape member.

10. The adhesive tape member of Hodgson, as shown in Figure 7 has "the a first surface and a second surface" that "elongate consistently along the entire longitudinal direction of the tape member while these surfaces are oppositely faced to each other" and "the individual side edges of the first surface and the second surface are each in linear forms in parallel to each other along the whole longitudinal direction of the tape member when the tape member is in an unstretched state". Additionally, if one were to examine the cross-section of the adhesive tape member of Hodgson as shown in Figure 7, it would read on "cross sections of the first surface...is in the unstretched state, the cross sections each have uniform form along the whole longitudinal direction...is in the unstretched state".

11. As to the claim requirement of "the elongate member includes a pair of holding portions configured to be held with fingers and arranged individually on a first end of the elongate member and a second end of the elongate member along the longitudinal direction", Hodgson teaches that the two edges 24 of the backing material 2 are left uncoated (column 10, lines 31-32). Moreover, as to the claim requirement of "the elongate member includes an adhering portion", the claim does not explicitly exclude the adhering portion from being a part of the surfaces of the tape member, therefore a portion of the backing layer surface of Hodgson which is covered with an adhesive layer is equated to the "adhering portion".

12. As to the claim limitations of "the tape member in the stretched state is configured to have a resilient shrinkability larger than tension of skin on the eyelid and smaller than a resilient shrinkability of the skin on the eyelid to form the fold in the direction perpendicular to the longitudinal direction of the tape member...lift the skin of the eyelid from a surface of an eyeball to form the fold on the eyelid by adhering to the eyelid while the tape member is in the stretched state and subsequently recoiling back toward the unstretched state", and "an entirety of the adhesive layer has an adhesiveness sufficient to prevent the...to form the double eyelid", the Examiner submits following:

13. It is reasonable to presume that the adhesive tape member of Hodgson has the aforementioned features including "resilient shrinkability" and sufficient width and a sufficient length for forming the fold because as set forth above the adhesive tape members of Hodgson and that of applicant have similar structure and composition. Further, since Hodgson is used on skin and to produce wrinkles, it would meet the claim recitation "an entirety of the adhesive layer has an adhesiveness sufficient to percent the...to form the double eyelid". Therefore, the aforementioned features would be present. The burden is shifted to applicant to prove it otherwise (see *In re Fitzgerald*, 205 USPQ 594).

14. Moreover, as to the claim requirement of the arrangement of a release material on each of the adhesive layers on the first surface and the second surface. It is noted that Hodgson discloses of applying the adhesive on at least one surface of the backing

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(column 1 lines 25-31) and covering the adhesive layer with a silicone-coated release paper (column 6 lines 70-73 and column 7 lines 70-71).

15. Thus, it would have been obvious to provide an adhesive on the second surface of the backing and cover it with a release layer, motivated by the desire to protect the adhesive layer.

16. As to the claim requirement of the elongate member being a string member and "cross sections...arcuate shapes...unstretched state", it is noted that the invention of Hodgson is used in surgical drapes, suture strips...solid eye liners etc. (column 3 lines 1-5). Further, Hodgson discloses the size and the shape of the suture strips may of course be varied as desired (column 8 lines 44-53). Therefore, choosing a shape the tape member in the form of a string having outwardly protruding arcuate shapes involves routine skill in the art.

17. Claims 45, 46, 50, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clavin (US 4, 653, 483).

18. It is respectfully submitted that recitations "a double eyelid forming article of manufacture for forming a fold on an eyelid of a user", "configured to adhere to the eyelid in...to form a double eyelid", and "wherein the string member in the stretched state is configured to have a resilient shrinkability larger than a tension of skin on the eyelid and smaller than a resilient shrinkability of the skin on the eyelid to form the fold

in a direction perpendicular to the longitudinal direction of the string member...to lift the skin of the eyelid from a surface of an eyeball...recoiling back toward an unstretched state due to the resilient shrinkability to form a double eyelid", and "an entirety of the adhesive layer has an adhesiveness sufficient to prevent the string member from being detached from adhering portions on the skin on the eyelid when the string member is adhered to the eyelid in the stretched state and subsequently recoiled back toward the unstretched state to form the double eyelid" are intended use of the claimed article. While some of these recitations are functional in nature, it is respectfully submitted if a structure and composition of the prior art article is same as claimed by applicant's article, then the prior art article is capable of functioning the intended use as presently claimed.

19. Based on the above, any reference disclosing a string member that is resiliently stretchable (i.e. elastic) having "a first and second surface to elongate consistently along the entire longitudinal direction of the same member while these surfaces are oppositely faced to each other", "the first surface and the second surface...pair of side edges that consistently elongate...the entire longitudinal direction of the tape member", "the individual side edges of the first surface and the second surface...forms in parallel to each other" along the whole longitudinal direction...when the tape member is in an unstretched state, cross sections of the first surface...uniform form along the whole longitudinal direction...when the tape member is in the unstretched state...the first surface and the second surface each have an adhesive layer...entirety of the first

surface and the second surface, the tape member has a consistent...along the entire longitudinal direction", will read on the claims.

20. Clavin discloses an adhesive tape having a backing and a layer of adhesive on each side of the adhesive tape (see abstract, Figure 15 and column 5 lines 1-5). As to the claim requirement of "string member", it is noted that Applicant has generally recited "a string member" but not provided any dimension (e.g. diameter, length etc.) of a string member nor defined what is meant by "string member". It is noted that Calvin's tape is applied to an eyelid to retain a fold in the skin thereof (column 1 lines 10-15). Further, Clavin discloses that "According to the present invention, a very thin strip of double-sided adhesive tape 32 generally **less than 1 cm in width** and 4 cm in length is attached to the upper eyelid 10 (column 3 lines 50-55). This disclosure of Clavin reads on a string member as claimed.

21. Further, the backing film of Clavin is formed of polyethylene (see column 5 lines 39-45), which meets claim 60. The polyethylene backing of Clavin reads on the resiliently stretchable elongate string member as required by the presently claimed invention. As to the claim requirements of "first surface and the second surface...oppositely faced to each other", "the first surface and the second surface each have a pair of side edges...of the string member", "the individual side edges are each in liner forms in parallel to each other...in an unstretched state", "cross sections of the first surface...outwardly protruding arcuate shapes...when the string member is in the

unstretched state...the cross sections each have a uniform form along the whole...in the unstretched state", these limitations are disclosed in Figure 13 (e.g. arcuate shape of the cross section) and Figure 15 or obvious optimization to one of ordinary skill in the art, motivated by the desire to produce a string member that can suitably be applied to eyelids.

22. As to the claimed features of "wherein the string member in the stretched state is configured to have a resilient shrinkability larger than a tension of skin on the eyelid and smaller than a resilient shrinkability of the skin on the eyelid to form the fold in a direction perpendicular to the longitudinal direction of the string member...to lift the skin of the eyelid from a surface of an eyeball...recoiling back toward an unstretched state due to the resilient shrinkability to form a double eyelid", and "an entirety of the adhesive layer has an adhesiveness sufficient to prevent the string member from being detached from adhering portions on the skin on the eyelid when the string member is adhered to the eyelid in the stretched state and subsequently recoiled back toward the unstretched state to form the double eyelid", and "a first end of the string member and a second end of the string member...a part configured to be removed after the double eyelid is formed" (claim 50), it is reasonable to presume that said features are necessarily present in the string member of Clavin.

23. Support for said presumption is based on the fact that as stated above the string members of Clavin as set forth above and that of applicant are structurally and

compositionally equivalent. Therefore, said claimed features would be present. Additionally, as to the claim requirement of the "an entirety of the adhesive layer has an adhesiveness sufficient to prevent the string member from being detached from adhering portions on the skin on the eyelid when the string member is adhered to the eyelid in the stretched state and subsequently recoiled back toward the unstretched state to form the double eyelid", the Examiner submits that since Clavin's article is applied to an upper eyelid to retain a fold in the skin thereof (see Background of The Invention of Clavin), Clavin meets this limitation. The burden is shifted to Applicant to prove it otherwise (*In re Fitzgerald*, 205 USPQ 594).

24. As to the claim requirement of the release material in a consistent and integral form, it would have been obvious to provide a release material in consistent and integral form, motivated by the desire to protect the adhesive layers.

25. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calvin (US 4,653,483) as applied to claim 45 above, and further in view of Samuelsen et al. (WO 99/38929). US 6,482,491B1 to Samuelsen is relied upon for convenience.

26. The invention of Clavin is previously disclosed. Clavin is silent as to teaching the individual release materials each include an arcuate groove along a surface of each of the adhesive layers.

27. However, Samuelsen discloses an article having a surface showing adhesive properties and a cover layer (release layer) for protecting the adhesive surface (abstract). Additionally, the release layer of Samuelsen has indentations in the forms of grooves, ridges, bulges, bumps etc. (column 2 lines 22-26 and column 4 lines 20-35). This disclosure of Samuelsen reads on the release material having an arcuate groove as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the release materials having arcuate groove, motivated by the desire to easily remove the release materials.

28. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clavin (US 4,653,483) as applied to claim 45 above, and further in view of Hodgson (US 3,645,835).

29. Clavin does not explicitly teach "a first end of string tape member and a second end of the string member...holding portions configured to be held with fingertips, and the holding portions have no adhesive property or have a suppressed adhesive property".

30. However, the invention of Hodgson is previously disclosed. Hodgson discloses that the two edges 24 of the backing material 2 are left uncoated (column 10, lines 31-32). The uncoated areas on the backing layer of Hodgson reads on a holding portion as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide holding portion having no adhesive property such that the string member can be handled easily during its application to an eyelid by

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a user and such arrangement would prevent user accidentally touching the adhesive layer and potentially contaminating the adhesive.

31. Claims 59 and 61 are under 35 U.S.C. 103(a) as being unpatentable over Hodgson (US 3,645,835) as applied to claims 39 and 51, and further in view of Berglund et al. (US 4,310,509).

32. Hodgson is silent as to teaching polyethylene. However, Berglund discloses a PSA having antimicrobial material in it. Further at column 4 lines 30-40; Berglund discloses that the homogeneous dispersion [i.e. adhesive] is coated onto various backings to form dressings, drapes, tapes, etc. The preferred backing material is polyethylene.

33. It is noted that Hodgson's invention is directed to PSA that are used in dressings, plasters, adhesive bandages etc. (column 1 lines 5-15). Hodgson is silent as to teaching polyethylene. Secondary reference of Berglund provides polyethylene that can be used in adhesive tapes, dressings etc.

34. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the polyethylene backing as taught by Berglund and used as a backing in the invention of Hodgson, because selecting a known material based on its suitability for its intended use establishes a *prima facie* case of obviousness.

Response to Arguments

35. Applicant's arguments filed on 04/18/11 have been fully considered but they are not persuasive.

36. With respect to the Examiner's comments in section 43 of OA mailed on 10/18/10, applicant argues "In section 43 of the Response to Arguments section, regarding the previous traversal of the rejection based on Hodgson, the Office Action notes that "applicant has not provided any factual evidence...". Further, applicant asserts that the portion of the Figure 3 that the OA mailed on 10/18/10 interprets as folds are actually wrinkles and such wrinkles have creases that extend vertically such that the skin folds in a direction that is parallel, not perpendicular to the longitudinal direction of the tape member. Applicant argues that the claimed invention is trying to prevent wrinkles. (See pages 3-4 of 04/18/11 amendment).

37. The Examiner respectfully disagrees. First, it was noted in the OA mailed on 10/18/10 that the Figure 3 submitted by applicant is not a Figure from Hodgson reference. Second, the presently claimed invention is broad that it does not exclude formation of wrinkles (note "comprising" in the preamble of claimed invention). As such applicant's arguments are not found persuasive.

38. It is noted that applicant has made arguments on pages 4-5 of 04/18/11 amendment that are referring to and based on 37 C.F.R. § 1.132 declaration submitted on 04/18/11 by Hideyuki Nojiri. However, the Examiner submits that said declaration is not found persuasive for the reasons set forth below.

37 C.F.R. § 1.132 declaration submitted on 04/18/11 by Hideyuki Nojiri

39. The declaration is attempting to establish that the prior art devices disclosed by Hodgson (Sample 2 of the declaration) and Clavin (Sample 3 of the declaration) do not create e.g. folds or double eyelid when compared to the device of the present invention (Sample 1). However, the declaration is not found persuasive for the following reasons:

(A) The declaration is not commensurate in scope with the presently claimed invention. Specifically, Sample 1 which allegedly represents the present invention is not commensurate in scope with the claims. For example, Sample 1 utilizes ***specific type of stretch fiber having specific thickness, length, and material, and adhesive***. However, none of these are included in the claims.

(B) The declaration states that the tape samples 1-3 were adhered to eyelid according to a method of forming a double eyelid described in the specification of presently claimed invention (see page 2, section 4 of the declaration). However, declaration fails to provide specific details of the method. Upon reviewing the specification, it is ***assumed*** that applicant is referring to a method of forming a double eyelid as set forth in a third full paragraph, page 4 of the specification. It appears that the tape is required to be stretched by a user in order for it to form a double eyelid. As such, the stretch force applied to the tape samples by different users could be varied and a question is raised whether the double eyelid

formation is dependent on the applied stretch force. If yes, what is the minimum stretch force required to apply to the tape member so as to form the double eyelid? Further, the claims do not recite any method of forming a double eyelid.

(C) The photographs submitted in the declaration are not clear and grainy in nature such that the vertical wrinkle details set out in photos 5 and 6 are not clearly visible. Photos 1, 5 and 6 basically look the same. They all show the formation of the double eyelid. There appears no significant difference between the photo 6 (Sample 2 allegedly corresponding to Hodgson) and photo 1 (Sample 1 of present invention) in terms of the vertical wrinkles formed toward the tape.

(D) With respect to Sample 2 (allegedly corresponding to Hodgson's article), the declaration describes e.g. feeling of strangeness formed on the eyelid of the examinee and presence of the wrinkles (page 8 of the declaration). The Examiner submits that these observations while may be useful in terms of ease of using the tape, they are not commensurate in scope with the basis of the rejections and the scope of the presently claimed invention. The claims do not exclude presence of wrinkles when the tape member is used to make a double eyelid.

40. Based on the discussion above, the declaration and Applicant's arguments referring to the declaration are not found persuasive.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP 2007-111218 A discloses adhesive sheet for double eyelid (see abstract). CN 1120937A discloses polypropylene for use in double eyelid formation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANISH DESAI whose telephone number is (571)272-6467. The examiner can normally be reached on Monday-Friday, 9:00AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alicia Chevalier can be reached on 571-272-1490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. D./

Anish Desai

Examiner, Art Unit 1788

06/01/11

/Hai Vo/

Primary Examiner, Art Unit 1788